

Tax Type: **PROPERTY TAX**
Issue: **Charitable Ownership/Use**

OKAW VALLEY COUNCIL,)	
BOY SCOUTS OF AMERICA)	
Applicant)	
)	Docket # 94-82-195
v.)	
)	Parcel Index # 08-17-0-208-014
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	

Appearances: Mr. William C. Norton appeared on behalf of Okaw Valley Council, Boy Scouts of America.

The hearing in this matter was held on January 14, 1997, at 1100 Eastport Plaza Drive, Collinsville, Illinois, to determine whether or not St. Clair County Parcel Index No. 08-17-0-208-014 qualified for exemption from real estate taxation for part or all of the 1994 assessment year.

Mr. Jack H. Weatherwax, Scout Executive of Okaw Valley Council, Boy Scouts of America, (hereinafter referred to as the “Applicant”) was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant is a charitable organization; secondly, whether the applicant owned the parcel here in issue during all or part of the 1994 assessment year; and lastly, whether the applicant used this parcel for charitable purposes during the 1994 assessment year. Following the submission of all of the evidence and a review of the

record, it is determined that the applicant is a charitable organization. It is also determined that the applicant owned this parcel during the entire 1994 assessment year. It is further determined that the applicant did not use this parcel for charitable purposes during the 1994 assessment year. It is therefore recommended that St. Clair County Parcel Index No. 08-17-0-208-014 remain on the tax rolls for the 1994 assessment year and be assessed to the applicant, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1994 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 5A.

2. On August 24, 1994, the St. Clair County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1994 assessment year. (Dept. Ex. No. 1)

3. On October 13, 1995, the Department advised the applicant that it was denying the exemption of this parcel. (Dept. Ex. No. 2)

4. By a letter dated October 25, 1995, the attorney for the applicant requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on January 14, 1997, was held pursuant to that request.

6. The applicant acquired the parcel here in issue by a warranty deed dated May 18, 1993. (Dept. Ex. No. 1B)

7. The applicant is a boy scout council, which encompasses nine counties in Illinois. This geographic area is bound by East St. Louis on the West, Chester on the South and Salem on the East. (Tr. p. 11)

8. The applicant is incorporated as an Illinois not-for-profit corporation. (Tr. p. 10)

9. The applicant owns and operates a boy scout camp called Camp Joy. Camp Joy consists of approximately 185 acres of wilderness and buildings near Carlyle, in Clinton County. Clinton County is one of the nine counties within the applicant's council. (Tr. p. 22)

10. The applicant also owns and operates a cub scout camp in Monroe County known as Camp Vanderverter, which consists of approximately 154 acres. Monroe County is also one of the nine counties within the applicant's council. (Tr. pp. 26 & 27)

11. The applicant also owns about 14 acres near Salem. (Tr. p. 28)

12. I take Administrative Notice of the Fact that the Department in Docket No. 87-67-19 determined that the applicant is a charitable organization and granted an exemption.

13. The applicant's administrative office building is located at 1801 North 17th Street in Belleville, Illinois. (Tr. p. 20)

14. The parcel here in issue is adjacent to that administrative office building. The address of this parcel is 1809 North 17th Street in Belleville. (Tr. pp. 19 & 20, Dept. Ex. No. 1)

15. The parcel here in issue is improved with a house that was formerly used as a residence. When this parcel and the residence became available, the applicant purchased it. The applicant then moved the scout store, which had been in the administrative office building, into the former residence on this parcel. The applicant found it necessary to have a larger space in which to conduct its scout store operation. (Tr. pp. 20 & 21, 31 & 32)

16. The house on this parcel is one level located on a crawl space. This one level is entirely used for the sale of scout books, scout badges, scout equipment and scout clothing. It is also used for the storage of inventory. (Tr. pp. 33-35, Appl. Ex. No. 7)

17. The employees of the scout store are qualified to provide to the scout leaders and the boys information on how to qualify for the various scouting awards and how to use the items which are available for purchase at the store. (Tr. p. 31)

18. Scout leaders, scouts, and the families of scouts, purchase the items for sale in the scout store. Scout leaders and scouts also purchase the items in the scout store from various other area Boy Scout Councils. (Tr. pp. 38-40)

19. The applicant makes a profit on all items sold in the scout store. (Tr. p.35)

20. This profit is returned to the applicant and is used for the activities and programs of the council. (Tr. p. 35)

21. Both Camp Joy and Camp Vanderventer have a PX where items including the type of items sold in the scout store are sold. In fact these items are consigned out of the scout store on the parcel here in issue to the camp PXs, for sale. (Tr. pp. 24-26)

22. The prices of the goods for sale in the scout store are never waived or reduced in cases of need. (Tr. p. 45)

23. The applicant makes provision through its campership programs for boys from low income families to be able to attend one of its camps by waiving or reducing the costs of attending camp in cases of need. In the current year the amount of camperships awarded was \$5,400.00. (Tr. pp. 46-48 & 51)

24. The scout troops of the council also assist boys from low-income families by providing them with scouting activities and badges at waived or reduced costs or fees. These activities are financed by various troop fundraisers in which all of the boys participate. (Tr. p. 48)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States (Emphasis supplied)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986).

Based on the exemption granted pursuant to Docket 87-67-19, I conclude that the Department has determined that the applicant is a charitable organization. I also conclude that the applicant owned this parcel during the entire 1994 assessment year.

Although the applicant has been determined by the Department to be a charitable organization, the parcel here in issue does not qualify for exemption. The testimony in this case clearly established that all of the various items sold in the scout store were sold at a profit and that the profits from these sales were used to fund the applicant's scouting activities. It was also established that the prices of the items sold in the scout store were not waived or reduced in cases of need.

In the case of The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied, the Salvation Army, an exempt Protestant Christian religious movement, operated a thrift store in a building in Waukegan Illinois. The purpose of the thrift store was to help fund the operation of the Adult Rehabilitation Center (or "ARC") operated by

the Salvation Army in Waukegan. In denying the exemption of the thrift store the Court at page 344 concluded as follows:

Based on the preceding evidence, we conclude that the primary purpose of the thrift store is to generate income to fund the Waukegan ARC. Moreover, the fact that the income is ultimately put to charitable purposes, *i.e.*, to fund the Salvation Army's rehabilitation program, does not entitle the property to a charitable use exemption, as it has long been held that the use to which property is devoted is decisive rather than the use to which the income derived from the property is employed. (. . . *People ex rel Baldwin v. Jessamine Withers Home* (1924), 312 Ill. 136, 139-41.) When money is made by the use of a building, that money constitutes profit, no matter to what purpose that money is applied. *Jessamine Withers Home*, 312 Ill. At 141.

The Court then went on and concluded as follows:

Also, the fact that the thrift store provides a number of other incidental services that are charitable in nature, *i.e.*, work therapy for some of the ARC clients, distribution of goods to the poor for a nominal sum, social and religious referrals, and participation in the local disaster relief program, does not change its primary purpose of generating income to fund the ARC operations.

The Court then denied the exemption for the Salvation Army Thrift Store in Waukegan. The facts in the case here in issue are very similar to the facts in The Salvation Army case and I conclude that The Salvation Army case is controlling in this matter

It should also be noted that if property, however owned, is let for return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial whether the owner makes a profit or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934)

Based on the foregoing I recommend that St. Clair County Parcel Index No. 08-17-0-208-014 remain on the tax rolls for the 1994 assessment year. I further recommend that the taxes on said parcel for the 1994 assessment year be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
June 10, 1998